



COMMONWEALTH of VIRGINIA

Office of the Governor

Sean T. Connaughton
Secretary of Transportation

May 24, 2010

The Council on Environmental Quality
Attn: Mr. Ted Boling
722 Jackson Place, N.W.
Washington, DC 20503

Dear Mr. Boling:

The Virginia Department of Transportation (VDOT) appreciates the opportunity to comment on the "Draft NEPA Guidance on Consideration of the Effects of Climate Change and Greenhouse Gas Emissions" issued by the Council on Environmental Quality (CEQ) on February 18, 2010, which provides guidance on the ways in which Federal agencies can improve their consideration of the effects of greenhouse gas emissions (GHG) and climate change in the evaluation of proposals for Federal actions under the National Environmental Policy Act (NEPA). Virginia has been recognized as a national leader on climate change issues, as our Commission on Climate Change recently finalized a Climate Change Action Plan that identifies ways to reduce GHG emissions, and our Virginia Energy Plan has established goals for GHG emission reductions throughout the Commonwealth.

Under the Clean Air Act, the Environmental Protection Agency (EPA) has set National Ambient Air Quality Standards (NAAQS) for criteria pollutants that can cause regional and localized air quality problems. GHG emissions, on the other hand, are thought to impact climate change at the global level, and have not been linked to any regional or local air quality problems. As such, VDOT is not supportive of GHG emissions analyses at the local or project level, as we feel that this is an inappropriate use of limited resources. The anticipated differences in GHG emissions among varying alternatives at the project level are simply too small to be meaningful on a global scale. In addition, VDOT does not believe that the NEPA statute and regulations require an evaluation of GHG emissions and climate change, and therefore feel that CEQ is going beyond their authority by proposing that climate change be addressed through the NEPA process. We are also concerned that this guidance is inconsistent with nationwide efforts to streamline NEPA, and believe it will be used in lawsuits designed to delay or kill needed transportation projects.

The draft guidance advises federal agencies to consider whether analysis of the direct and indirect GHG emissions from the proposed action may provide meaningful information to decision-makers and the public. Specifically, the draft guidance says that if a proposed action would be reasonably anticipated to cause direct emissions of 25,000 metric tons or more of CO₂-

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equivalent GHG emissions on an annual basis, agencies should consider this as an indicator that a quantitative and qualitative assessment may be meaningful to decision-makers and the public. Although we believe that the issuance of this guidance exceeds the authority of the Council as established in NEPA, we are pleased to provide these comments for consideration should CEQ choose to finalize the draft guidance as proposed:

- The GHG emissions “reference point” of 25,000 metric tons per year (tpy) should be increased to a level between 75,000 and 100,000 tpy to be consistent with the threshold(s) contained in EPA’s Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule issued May 13, 2010, which defines when permits are required for new or modified stationary sources under the Clean Air Act.
- CEQ should recognize that agencies might not be able to draw meaningful conclusions about the relative differences in GHG emissions among the various project alternatives, and should therefore allow agencies flexibility to determine whether or not a quantitative GHG emissions analysis is appropriate on a project-by-project basis.
- CEQ should clarify that the reference point applies to the increase in GHG emissions expected from the project (i.e., build emissions minus no-build emissions), and not to the total direct and indirect GHG emissions expected from the project as proposed (i.e., the total build emissions), and also clearly define both direct and indirect emissions in the context of transportation projects.
- Since the draft guidance rightfully acknowledges that there are limits to the capability of existing tools for projecting GHG emissions, CEQ should allow agencies to forego a GHG emissions analysis when it is determined that a comparison of alternatives is not feasible due to the limitations of existing models and methodologies.
- Although the guidance proposes that mitigation measures and reasonable alternatives be considered to reduce action-related GHG emissions, CEQ should explicitly acknowledge that NEPA related mitigation measures are not required per NEPA statute.

Once again, thank you for the opportunity to comment on the proposed Guidance. If you have any questions about these comments, please feel free to contact Jim Ponticello, VDOT Air Quality Program Manager, at (804) 371-6769.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sean T. Connaughton', with a long horizontal stroke extending to the right.

Sean T. Connaughton

SC:km